

GARDNER, CARTON & DOUGLAS

SUITE 3400-QUAKER TOWER

331 NORTH CLARK STREET

WRITER'S DIRECT DIAL NUMBER

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WASHINGTON, D.C.

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00011

142860

January 17, 1992

VIA MESSENGER

Russell Selman
Bell, Boyd & Lloyd
Three First National Plaza
70 West Madison Street
Suite 3200
Chicago, Illinois 60602-3200

RE: Coke Plant Site - License Agreement

Dear Mr. Selman:

Enclosed please find a revised draft of the License Agreement proposed by Outboard Marine Corporation ("OMC") for the Coke Plant Site. As you will note, a couple of additions have been made to the Agreement to address concerns of OMC relating to potential impacts of the RI/FS on existing OMC activities at the Site and remedial activities being conducted by the Waukegan Harbor Site Trust pursuant to the existing Consent Decree.

Please contact myself or Dick Kissel to discuss at your earliest convenience.

Very truly yours,


John W. Watson

2 Masters

JWW:js
Enclosure

cc: Dale Vitale
J. Roger Crawford
Sean Mulroney

9653

- Responsible for interferences delays
- Warranting/Performance: Good for delayed work - not of USG's control
- EPA loses right to control work

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement" or "License") is made this ____ day of _____, 1992, by and between OUTBOARD MARINE CORPORATION ("OMC") and NORTH SHORE GAS COMPANY ("North Shore") (collectively, the "Parties");

WHEREAS, OMC, North Shore and General Motors Corporation have been identified by the United States Environmental Protection Agency ("EPA") as potentially responsible parties ("PRPs") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., for the Waukegan Manufactured Gas and Coke Plant Site in Waukegan, Illinois, as depicted on Exhibit A attached hereto, (the "Coke Plant Site");

WHEREAS, EPA and North Shore entered into an Administrative Order On Consent Re: Remedial Investigation and Feasibility Study for the Coke Plant Site (EPA Docket No. VW-91-C-085) on August 27, 1990 (the "Order");

WHEREAS, the Order required that North Shore conduct a Remedial Investigation and Feasibility Study ("RI/FS") to (1) fully determine the nature and extent of the potential threat, if any, to the public health, welfare and the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants from or at the Coke Plant Site; (2) determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise remedy any release or threatened release of hazardous substances,

pollutants or contaminants from or at the Coke Plant Site; and
(3) recover response and oversight costs incurred by EPA and the Illinois Environmental Protection Agency ("IEPA") consistent with the National Contingency Plan, 40 C.F.R. § 300 et seq. ("NCP");

WHEREAS, OMC is currently funding remedial activities conducted by the Waukegan Harbor Site Trust, including its employees, agents, contractors and subcontractors, (collectively, the "Trust"), in and around the Coke Plant Site pursuant to the Consent Decree, as amended, entered into between OMC, EPA and IEPA in United States v. Outboard Marine Corporation, Nos. 88-C-8571 and 88-C-8572 (N.D. Ill.) (the "Consent Decree");

WHEREAS, OMC represents that it has authority to enter into this License with respect to that parcel depicted on Exhibit B attached hereto (the "Site"), which includes those portions of the Coke Plant Site not owned, leased or subject to imminent conveyance to Larsen Marine Service;

WHEREAS, North Shore has requested permission to enter upon the Site in order to conduct the RI/FS; and

WHEREAS, OMC is willing to grant North Shore a limited license for the above-stated purposes;

NOW, THEREFORE, conditioned upon the mutual covenants, promises and agreements stated herein, the Parties agree as follows:

1. OMC ("Licensor") hereby grants to North Shore, its employees, agents, contractors and subcontractors necessary to conduct the RI/FS, (collectively, the "Licensee"), a temporary license, as described and otherwise limited herein, to enter upon the Site for the exclusive purpose of conducting the RI/FS pursuant to the Order.

2. Licensor hereby acknowledges the receipt of the RI/FS Work Plan and Order.

3. Licensee shall be authorized to conduct all activities permitted by this License, provided that:

(a) such activities shall not interfere with Licensor's day-to-day operations at the Site, the operations of any other individual or entity duly authorized by Licensor to utilize the Site, or the activities of the Trust in the implementation of the Consent Decree; and

(b) to the extent that Licensee's activities may affect those portions of the Site designated in Exhibit C attached hereto, Licensee shall provide Licensor with a detailed description of all activities to be conducted at those portions of the Site including, without limitation, descriptions of the type of equipment to be used, methods of installation, sampling and monitoring of such equipment, and the anticipated duration

*already provided
the Work
Plan*

of such activities, and Licensee shall provide Licenser with a reasonable opportunity to comment on these activities prior to commencing such activities at the Site.

we are subject to schedule and we cannot have two meetings

OAC is EPA
In the event that Licensee's activities at the Site, in the sole and exclusive judgment of Licenser, interfere with Licenser's day-to-day operations, those of other authorized individuals or entities, or any activities of the Trust in the implementation of the Consent Decree, Licenser shall have the authority, at any time and without notice, to order Licensee to cease all activities at the Site or to remove from the Site any employee, agent, contractor or subcontractor of Licensee.

termination in sole & exclusive OAC judgment

endless grief

Should Licenser exercise its right to halt Licensee's activities or remove Licensee from the Site, Licenser and Licensee shall use their best efforts to resolve any issues of interference in a mutually satisfactory manner. If the Licenser and Licensee fail to resolve their dispute and the issues of interference relate solely to conflicts involving or otherwise associated with Licensee's implementation of the RI/FS and the implementation of the Consent Decree, the EPA Project Manager(s) responsible for oversight of these activities shall have the authority to resolve the issues of interference provided that EPA agrees that the issues of interference constitute "force majeure" events under the Order and the Consent Decree and the existing Remedial Action Plan

*PP is controlled
either my agree
to OMC's schedule
or my
high North
Source Out!*

developed pursuant to the Consent Decree is modified to the satisfaction of Licensor.

4. Licensee shall provide Licensor with not less than seventy-two (72) hours notice of any sampling to be conducted at the Site, giving detail as to the location, time and manner of such sample-taking and shall offer Licensor or the Trust the opportunity to split any samples collected.

5. Licensee shall be liable for all costs and damages, whether direct or indirect, resulting from or otherwise associated with Licensee's activities at the Site, including, without limitation, additional costs or costs of delay incurred by Licensor or the Trust in the implementation of the Consent Decree resulting from issues of interference, loss of use of Licensor's or the Trust's facilities or structures, including parking facilities, and damage, including consequential damage, to Licensor's data processing equipment and operations.

Outrageous

Licensee shall not be liable for any injuries or damage to persons or property resulting exclusively and directly from the negligent, reckless or willful acts or omissions of Licensor or any person acting on its behalf in performing the day-to-day operations of Licensor or carrying out any activity under the Consent Decree.

6. Licensee shall be solely responsible for safety and security at the Site, and Licensor shall permit only those employees, agents, contractors and subcontractors of Licensee designated by North Shore in writing ("Authorized Parties") to

enter the Site at reasonable times to conduct the activities permitted under this License. *prior to commencing* activities at the Site pursuant to this License, Licensee shall deliver to Licensors for approval a security plan for the Site. *initiated previously* Licensee further agrees to implement such additional security measures as Licensors may request from time to time. Licensee shall hold Licensors harmless for any costs or damages resulting from breaches of such security or any acts of theft, burglary or vandalism. *OSHA does not approve plans w/o statutory authority* Prior to commencing any activities at the Site, Licensee's Health and Safety Plan shall be approved in writing by the Occupational Safety and Health Administration.

7. North Shore shall ensure that all Authorized Parties possess the proper licensing, certifications and training as required under all applicable laws and regulations to conduct any activities at the Site including, without limitation, compliance by all Authorized Parties with the Licensee's Health and Safety Plan. Licensee shall conduct all activities at the Site in strict compliance with all laws, rules, regulations, orders or decrees, including the Order and Consent Decree.

8. Licensee shall, at its own cost and expense and prior to any entry upon the Site, obtain the following insurance coverage and shall maintain such insurance coverage during the term of this Agreement.

<u>COVERAGE</u>	<u>LIMITS</u>
(1) Employer's Liability	\$1,000,000 each occurrence
(2) General Liability (personal injury)	\$1,000,000 aggregate

<u>COVERAGE</u>	<u>LIMITS</u>
(3) General Liability (bodily injury and property damage combined)	\$3,000,000 each occurrence

<u>COVERAGE</u>	<u>LIMITS</u>
(4) Automobile Liability (bodily injury and property damage combined)	\$1,000,000 each occurrence

(5) Workman Compensation	Statutory
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Licensee shall also add Licensor as an additional named insured and loss payee under each of its insurance policies. Failure of Licensee to maintain insurance coverage in compliance with the requirements of this paragraph shall result in the automatic termination of this Licensee. Prior to commencing any activities at the Site, Licensee shall provide Licensor, as evidence of such insurance, a certificate of insurance in compliance with the requirements of this paragraph.

9. Licensee agrees to indemnify and hold harmless Licensor, against and from any and all claims, demands, damages, losses, lawsuits, other proceedings, causes of action, liabilities, claims of lien, liens, civil or criminal penalties and charges, attorneys' fees or other costs and expenses which may at any time be imposed upon, incurred by or asserted or awarded against Licensor and arising from or out of negligent, grossly negligent, or intentional acts of or by Licensee in connection with any activities conducted by Licensee at the Site.

mutuality
and Licensor shall provide license

10. Licensee shall provide Licensor with all documents which reference, discuss, describe or otherwise concern the activities of Licensee at the Site in the preparation for and completion of the RI/FS pursuant to the Order, including, without limitation, all work plans, including amendments thereto, field sampling plans, quality assurance plans, health and safety plans, analytical results and data, reports, and correspondence between North Shore and any government agency, except for such documents which fall within the coverage of the attorney-client privilege. Licensor agrees to reimburse North Shore for any and all commercially reasonable reproduction costs related to the provision of the above-referenced documents.

11. All equipment, machinery, supplies and other personal property which Licensee causes to be located at the Site (collectively, the "Licensee property") for the purpose of conducting the RI/FS pursuant to the Order shall remain the property of the Licensee. Following the completion of all activities conducted pursuant to the Order, Licensee shall immediately remove all Licensee property from the Site or obtain an additional license as provided in Paragraph 12. Licensee shall also remove all refuse and debris that did not exist at the Site prior to the RI/FS or and that was generated as a result of the Licensee's activities at the Site and shall perform all activities necessary to return the Site to its original condition existing prior to the commencement of Site activities permitted under this License, including, without

limitation, repaving and regrading. If Licensee fails to remove all Licensee property from the Site or to properly and adequately return the Site to its original condition upon termination of this License, Licensor shall have the authority at Licensee's sole cost and expense, to take all actions necessary to satisfy of Licensee's obligations under this paragraph.

12. To the extent that EPA orders Licensee to undertake additional activities at the Site upon completion of the RI/FS including the possible operation, maintenance and sampling of monitoring wells, Licensor and Licensee shall enter into an additional license for the purpose of providing for the completion of such subsequent activities. *account agreement #2*

13. This License shall continue in effect until such time as the RI/FS is concluded to the satisfaction of EPA as provided in Paragraph XXX of the Order entitled "Termination and Satisfaction." By Termination and Satisfaction of this License, Licensor makes no acknowledgement that the work performed by Licensee is consistent with the MCP.

14. The Parties reserve all rights and defenses that they may have individually or collectively pursuant to any available legal authority.

15. The Parties recognize that the Site access provided by this License is necessary to the completion of the RI/FS pursuant to the Order, although the Parties dispute the benefit conferred on Licensee as a result of Licensor's voluntary granting of this License. *OK*

16. Failure of Licensee to fully and promptly comply with all terms and conditions of this License shall result in immediate revocation by Licensor.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed the day and year first above written.

OUTBOARD MARINE CORPORATION

By: _____
D.J. Baddeley
Associate General Counsel
and Secretary

NORTH SHORE GAS COMPANY

By: _____
Patrick J. Doyle
Vice President

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